

NOT INCLUDED IN
BOUND VOLUMES

PMH
Edgartown, MA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRANSIT CONNECTION, INC.
Employer

Case 01-RC-145728

and

AMALGAMATED TRANSIT UNION
LOCAL 1548, AFL-CIO, CLC
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to a second election held September 10, 2015, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 17 for and 14 against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings¹ and recommendations, and finds that a certification of representative should be issued.

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

Member Miscimarra agrees with the hearing officer and his colleagues that the Employer's Objection 1, alleging employee threats of violence, should be overruled under the applicable multifactor standard set forth in *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984), for determining whether third-party threats warrant setting aside an election. Although Member Miscimarra otherwise agrees with that standard, he would abandon the phrase "general atmosphere of fear and reprisal" because it improperly suggests that an election cannot be set

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Amalgamated Transit Union Local 1548, AFL-CIO, CLC, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time operators employed by the Employer at its 11 A Street, Edgartown, Massachusetts facility but excluding office clerical employees, managerial employees, dispatchers, mechanics, confidential employees, seasonal employees, guards and supervisors as defined in the Act, and all other employees.

Dated, Washington, D.C., March 15, 2016.

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

aside unless third-party threats affected nearly all eligible voters, no matter how close the tally and how serious the misconduct. Contrary to the implication of the phrase, the Board has in fact properly set aside elections based on serious third-party misconduct affecting only a few determinative voters. E.g., *Robert Orr–Sysco Food Services*, 338 NLRB 614 (2002); *Smithers Tire*, 308 NLRB 72 (1992); *Buedel Food Products Co.*, 300 NLRB 638 (1990); *Steak House Meat Co.*, 206 NLRB 28 (1973).